

Status of Report: Public

Meeting: Combined Fire Authority

Date: 30 November 2022

Subject: Firefighters' Pension Scheme - Category 2 Immediate Detriment

Report by: The Scheme Manager

Author: Colin Sharpe, Scheme Manager

For: Discussion

Purpose

1. The purpose of this report is to draw to the attention of the CFA the current approach to the Firefighters' Pension Scheme - Category 2 Immediate Detriment, as requested by the Local Pension Board at its meeting on 10 November 2022.

Recommendation

2. The CFA is asked to:
 - a) Note this update and make any comments to the Scheme Manager and/or Chief Fire and Rescue Officer.
 - b) Note the potential risks to the CFA of not offering the category 2 immediate detriment remedy for retired members at this present time.

Executive Summary

3. As the CFA may recall, Category 2 members are those individuals who have retired from April 2015 onwards after they had been transferred into the 2015 pension scheme. They therefore did not receive the full benefits of their legacy scheme, usually the 1992 scheme. Following the age discrimination judgement, they are entitled to a financial immediate detriment remedy to enable all of their service from the transfer date to retirement to be counted in their legacy scheme (or to 31 March 2022 if earlier, as from 1 April 2022 all on-going service is in the 2015 scheme).
4. The Local Pension Board at its meeting on 10 November 2022 received a report on the question of whether the immediate detriment remedy should now be offered to these members in advance of the expected national implementation in October 2023. Following discussion, the Board accepted the recommendation of the Scheme Manager and the Chief Fire and Rescue Officer not to make such an offer.
5. This recommendation was made because of the significant tax charges that would without doubt be incurred on any advanced remedy payments, as tax law currently stands ahead of the expected national implementation. There was also a risk of other tax charges being

due. Whilst the majority of the charges would be attributable to the individual retired member, the CFA would be expected to fund them due to the principle that members should not be worse off due to the age discrimination. The Board also noted that members will still receive their full remedy entitlement in due course once enacted at national level, albeit at a later date than they may have hoped /expected - although with the key benefit that no tax risks or penalties should materialise for them or the CFA.

6. Some twelve retired members may be entitled to the remedy. The total costs payable by the CFA, if these members were to take the remedy early, could broadly be in the region of £50,000 to £100,000. It is possible that further members could retire and become eligible.
7. The Board requested however that the CFA notes the risks of not proceeding, principally that the Fire Brigades Union (FBU) could support a legal claim here or elsewhere, on the grounds that the CFA is failing to implement the immediate detriment remedy at this time. Also of course, an individual retired member could institute legal proceedings without such support.
8. The Board also agreed that the recommendations should be revisited if the national position were to change significantly, and that an urgent meeting be convened.

Background

9. The background is provided in the Scheme Manager's report to the Local Pension Board meeting on 10 November 2022, attached at Appendix A to this report. The relevant detailed content can be found at paragraphs 19 to 39.

Report Implications/Impact

10. Legal (including crime and disorder)

This report to the Local Pension Board (attached at Appendix A) was written to inform Members of the latest legal developments relating to the Firefighters' Pension Scheme and how the service is working on resolving the current situation.

The Public Service Pensions Act 2013 introduced a framework for the governance and administration of public service pension schemes. The report aimed to fulfil the requirement for Members to assist the Scheme Manager in ensuring that effective administration arrangements are in place.

11. Financial (including value for money, benefits and efficiencies)

A number of financial risks continue to present themselves around the remedy, including actions taken proving to not be entirely correct or with unresolved and/or unforeseen consequences. The CFA could be subject to legal proceedings, which would incur costs.

There is also a potential financial liability on the Authority and/or retiring members, for example tax costs pending the intended changes to tax regulations. This risk would

become more significant if the immediate detriment remedy is offered to category 2 retired members.

Payments made under the Immediate Detriment Framework will either be a scheme payment and therefore from the pension fund account, or an employer payment which cannot be met from the pension fund account and will fall to the Authority to fund.

12. Risk (including corporate and operational, health and safety and any impact on the continuity of service delivery)

The CFA continues to face a number of risks associated with the management of pensions and the implementation of the remedy.

13. Staff, Service Users and Stakeholders (including the Equality Impact Assessment)

An equality impact assessment has not been carried out, as the Service is trying to correct inequalities as identified by court proceedings and judgements.

14. Environmental

There are no environmental implications arising from this report.

15. Impact upon “Our Plan” Objectives

There are no specific impacts, although a general impact on all ‘People’ related elements of the plan.

Appendices

Appendix A – Scheme Manager’s report to the Local Pension Board, 10 November 2022

Background Papers

None

Officer to Contact

Colin Sharpe, Deputy Director of Finance, Leicester City Council

colin.sharpe@leicester.gov.uk

0116 454 4081

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